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Email: Geoff.Davis@klgates.com

Attorneys for Defendant Crane Co.

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
(San Francisco Division)**

RUSSELL C. ROBERTS, JR.,

Plaintiff,

vs.

CRANE CO., et al.,

Defendants.

Case No. 3:08-cv-01338 JL

(Superior Court, County of San Francisco,
Case No. CGC-07-274248)

**DECLARATION OF GEOFFREY M.
DAVIS, ESQ. IN SUPPORT OF CRANE
CO.'S OPPOSITION TO MOTION FOR
REMAND**

Hearing Date: March 19, 2008

Time: 9:30 a.m.

Courtroom: F, 5th Floor

Judge: Chief Magistrate Judge James Larson

I, Geoffrey M. Davis, declare:

1. I am an attorney admitted to practice before this Court. I am an associate with the law firm of Kirkpatrick & Lockhart Preston Gates Ellis LLP, counsel of record for Defendant Crane Co. I make this declaration in support of Crane Co.'s Opposition to Plaintiff's Motion to Remand. I am one of the trial attorneys for Crane Co. in the case of *Russell C. Roberts v. A.W. Chesterton Company, et al.*, San Francisco Superior Court Case No. CGC-07-274248, which was filed in that court on June 18, 2007. I make the statements in this Declaration on personal knowledge, and am competent so to testify.

2. In the state court proceeding in the Superior Court of California for San Francisco County, the case was assigned for jury trial to the Honorable Julie Tang. Prior to commencement of trial, the parties met and conferred in person and via email concerning a number of issues, including a list of the parties in the case to be included in the jury questionnaires. Counsel for plaintiff, Anthony Vieira, Esq., provided a list of the parties in the case via email on January 28, 2008. Attached to Mr. Vieira's email was a document in a word processing format, which listed as parties only Russell C. Roberts, Jr., Buffalo Pumps, Inc., Carrier Corporation, Crane Co., Durabla Manufacturing Company, The Goodyear Tire & Rubber Company, Gould's Pumps (IPG), Inc., and Metalclad Insulation Corporation. A true and correct copy of the email of January 28, 2008, and the word processing document that was attached thereto, are attached as Exhibit A hereto.

3. A true and correct copy of excerpts of the Trial Transcript for February 11, 2008, as referenced in Crane Co.'s Memorandum of Points and Authorities in Opposition to Motion to Remand, is attached as Exhibit B hereto.

4. A true and correct copy of excerpts of the Trial Transcript for February 14, 2008, as referenced in Crane Co.'s Memorandum of Points and Authorities in Opposition to Motion to Remand, is attached as Exhibit C hereto.

5. A true and correct copy of excerpts of the Trial Transcript for February 22, 2008, as referenced in Crane Co.'s Memorandum of Points and Authorities in Opposition to Motion to Remand, is attached as Exhibit D hereto.

6. A true and correct copy of excerpts of the Trial Transcript for March 7, 2008, as referenced in Crane Co.'s Memorandum of Points and Authorities in Opposition to Motion to Remand, is attached as Exhibit E hereto. Although the first page of the transcript shows the date March 6, 2007, the transcript is, in fact, from March 7, 2008.

7. A true and correct copy of the Economic Loss Report of Barry Ben-Zion, Ph.D. dated November 19, 2007 is attached as Exhibit F hereto.

///

///

8. A true and correct copy of the Trial Transcript of March 6, 2008, testimony of Barry Horn, M.D., p. 1558, lines 5-23 and p. 1560, line 20 – p. 1561, line 11, is attached as Exhibit G hereto.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 25, 2008

Geoffrey M. Davis

**EXHIBIT A TO THE MARCH 13, 2008
DECLARATION OF GEOFFREY M. DAVIS**

Davis, Geoffrey M.

From: Barnes, Michele C.
Sent: Monday, March 10, 2008 9:26 PM
To: Davis, Geoffrey M.; Ramirez, Michael John
Subject: FW: Russell Roberts - upupdated email distribution list
Attachments: The Parties.docx; The Parties.doc

E-mail from plaintiffs' counsel which identifies all of the parties in the action.

From: Anthony E. Vieira (AEV) [mailto:AVieira@paulandhanley.com]
Sent: Monday, January 28, 2008 10:45 PM
To: Deborah Smith; Barnes, Michele C.; Lee, Jennifer; Doyle, Peggy S.; tcrosby@crosbyrowell.com; lstorm@storm-law.com; jmurray@jacksonwallace.com; Oberg, Lisa; Berfield, Frank; Feng, Felicia; khollenbeck@storm-law.com; Kristen A. Herndon (KAH); kvieira@vieiratriallaw.com; Tony Vieira
Subject: RE: Russell Roberts - upupdated email distribution list

The parties attached

From: Deborah Smith [mailto:dasmith@gordonrees.com]
Sent: Monday, January 28, 2008 10:29 PM
To: Anthony E. Vieira (AEV); Barnes, Michele C.; Lee, Jennifer; Doyle, Peggy S.; tcrosby@crosbyrowell.com; lstorm@storm-law.com; jmurray@jacksonwallace.com; Oberg, Lisa; Berfield, Frank; Feng, Felicia; khollenbeck@storm-law.com; Kristen A. Herndon (KAH); kvieira@vieiratriallaw.com; Tony Vieira
Subject: RE: Russell Roberts - upupdated email distribution list

got it, thanks. I also need a list of all parties - the exact name and spelling for the appendix

From: Anthony E. Vieira (AEV) [mailto:AVieira@paulandhanley.com]
Sent: Monday, January 28, 2008 10:26 PM
To: Deborah Smith; Barnes, Michele C.; Lee, Jennifer; Doyle, Peggy S.; tcrosby@crosbyrowell.com; lstorm@storm-law.com; jmurray@jacksonwallace.com; Oberg, Lisa; Berfield, Frank; Feng, Felicia; khollenbeck@storm-law.com; Kristen A. Herndon (KAH); kvieira@vieiratriallaw.com; Tony Vieira
Subject: RE: Russell Roberts - upupdated email distribution list

Experts list attached

From: Deborah Smith [mailto:dasmith@gordonrees.com]
Sent: Monday, January 28, 2008 10:12 PM
To: Anthony E. Vieira (AEV); Barnes, Michele C.; Lee, Jennifer; Doyle, Peggy S.; tcrosby@crosbyrowell.com; lstorm@storm-law.com; jmurray@jacksonwallace.com; Oberg, Lisa; Berfield, Frank; Feng, Felicia; khollenbeck@storm-law.com; Kristen A. Herndon (KAH); kvieira@vieiratriallaw.com; Tony Vieira
Subject: RE: Russell Roberts - upupdated email distribution list

I did not remember discussing that exact language in 11 but I am okay with it at this point. Anyone disagree? I missed 61, sorry about that. Any other comments?

Tony, do you have a list of parties/experts to attach as the official appendix?

3/13/2008

Who is making the 120 copies? Anyone have the resources to do that in the morning in time to get them to court?

From: Anthony E. Vieira (AEV) [mailto:AVieira@paulandhanley.com]

Sent: Monday, January 28, 2008 10:04 PM

To: Deborah Smith; Barnes, Michele C.; Lee, Jennifer; Doyle, Peggy S.; tcrosby@crosbyrowell.com; lstorm@storm-law.com; jmurray@jacksonwallace.com; Oberg, Lisa; Berfield, Frank; Feng, Felicia; khollenbeck@storm-law.com; Kristen A. Herndon (KAH); kvieira@vieiratriallaw.com; Tony Vieira

Subject: RE: Russell Roberts - upupdated email distribution list

Corrections to #11 and #61 attached (in red)

-Tony Vieira

From: Deborah Smith [mailto:dasmith@gordonrees.com]

Sent: Monday, January 28, 2008 9:52 PM

To: Barnes, Michele C.; Anthony E. Vieira (AEV); Lee, Jennifer; Doyle, Peggy S.; tcrosby@crosbyrowell.com; lstorm@storm-law.com; jmurray@jacksonwallace.com; Oberg, Lisa; Berfield, Frank; Feng, Felicia; khollenbeck@storm-law.com; Kristen A. Herndon (KAH); kvieira@vieiratriallaw.com; Tony Vieira

Subject: RE: Russell Roberts - upupdated email distribution list

darn, thought I caught all those. I will fix

From: Barnes, Michele C. [mailto:Michele.Barnes@klgates.com]

Sent: Monday, January 28, 2008 9:48 PM

To: Deborah Smith; Anthony E. Vieira (AEV); Lee, Jennifer; Doyle, Peggy S.; tcrosby@crosbyrowell.com; lstorm@storm-law.com; jmurray@jacksonwallace.com; Oberg, Lisa; Berfield, Frank; Feng, Felicia; khollenbeck@storm-law.com; Kristen A. Herndon (KAH); kvieira@vieiratriallaw.com; Tony Vieira

Subject: RE: Russell Roberts - upupdated email distribution list

I would recommend that no. 23 and no. 39 be updated with the "you, a family member or anyone close to you" language.

From: Deborah Smith [mailto:dasmith@gordonrees.com]

Sent: Monday, January 28, 2008 9:45 PM

To: Barnes, Michele C.; Anthony E. Vieira (AEV); Lee, Jennifer; Doyle, Peggy S.; tcrosby@crosbyrowell.com; lstorm@storm-law.com; jmurray@jacksonwallace.com; Oberg, Lisa; Berfield, Frank; Feng, Felicia; khollenbeck@storm-law.com; Kristen A. Herndon (KAH); kvieira@vieiratriallaw.com; Tony Vieira

Subject: RE: Russell Roberts - upupdated email distribution list

Importance: High

The proposed jury questionnaire is attached. Please review as it is late and I think I got all the changes, corrections and additions but there is no guarantee that I was perfect. Please let me know ASAP if there are any additional changes. The appendix still has to be completed but I wanted to get the substance to you as soon as possible. thanks

From: Barnes, Michele C. [mailto:Michele.Barnes@klgates.com]

Sent: Monday, January 28, 2008 8:05 PM

To: Deborah Smith; Anthony E. Vieira (AEV); Lee, Jennifer; Doyle, Peggy S.; tcrosby@crosbyrowell.com; lstorm@storm-law.com; jmurray@jacksonwallace.com; Oberg, Lisa; Berfield, Frank; Feng, Felicia; khollenbeck@storm-law.com; Kristen A. Herndon (KAH); kvieira@vieiratriallaw.com; Tony Vieira

Subject: RE: Russell Roberts - upupdated email distribution list

3/13/2008

Finals revisions.

From: Deborah Smith [mailto:dasmith@gordonrees.com]
Sent: Monday, January 28, 2008 8:03 PM
To: Deborah Smith; Barnes, Michele C.; Anthony E. Vieira (AEV); Lee, Jennifer; Doyle, Peggy S.; tcrosby@crosbyrowell.com; lstorm@storm-law.com; jmurray@jacksonwallace.com; Oberg, Lisa; Berfield, Frank; Feng, Felicia; khollenbeck@storm-law.com; Kristen A. Herndon (KAH); kvieira@vieiratriallaw.com; Tony Vieira
Subject: RE: Russell Roberts - upupdated email distribution list

SECOND REVISED: Speak now or never. see list below

From: Deborah Smith
Sent: Monday, January 28, 2008 7:54 PM
To: 'Barnes, Michele C.'; Anthony E. Vieira (AEV); Lee, Jennifer; Doyle, Peggy S.; tcrosby@crosbyrowell.com; lstorm@storm-law.com; jmurray@jacksonwallace.com; Oberg, Lisa; Berfield, Frank; Feng, Felicia; khollenbeck@storm-law.com; Kristen A. Herndon (KAH); kvieira@vieiratriallaw.com; Tony Vieira
Subject: RE: Russell Roberts - upupdated email distribution list

REVISED:

I have taken the list I rec'd from Tony earlier, added my experts and added those you just emailed me about. Pls review again and if your expert is not on it, let us know. I removed the judge and clerk from this email. thanks

Barry Ben-Zion

Kirk Blackerby

Charles Blake

Frederick Boelter

Antone Brooks

Kenneth Cohen

Richard Cohen

James Crapo

Laura Fuchs Dolan

James Delaney

Allan Feingold, M.D.

Samuel Forman, M.D.

Frank Gomer

Michael Graham, M.D.

Patricia Hall

3/13/2008

Samuel P. Hammar, M.D.

Barry Horn, M.D.

Admiral Roger Horne

Larry Luikonen

Thomas McCaffrey

Gerald Meyers, M.D.

Robert Morgan, M.D.

Margo Ogus

Donna Ringo

William Ringo

Admiral David Sargent

Capt. Richard Silloway

Allen Smith, M.D.

Dorsett Smith, M.D.

Robert Strode

Peter Valberg

From: Anthony E. Vieira (AEV) [mailto:AVieira@paulandhanley.com]

Sent: Monday, January 28, 2008 7:30 PM

To: Lee, Jennifer; Doyle, Peggy S.; tcrosby@crosbyrowell.com; lstorm@storm-law.com; michele.barnes@klgates.com; jmurray@jacksonwallace.com; Deborah Smith; Oberg, Lisa; Berfield, Frank; jtang@sftc.org; dfeinberg@sftc.org; Feng, Felicia; khollenbeck@storm-law.com; Kristen A. Herndon (KAH); kvieira@vieiratriallaw.com; Tony Vieira

Subject: RE: Russell Roberts - upupdated email distribution list

Additional email update list

From: Lee, Jennifer [mailto:jelee@mckennalong.com]

Sent: Monday, January 28, 2008 5:30 PM

To: Doyle, Peggy S.; tcrosby@crosbyrowell.com; Anthony E. Vieira (AEV); lstorm@storm-law.com; michele.barnes@klgates.com; jmurray@jacksonwallace.com; dasmith@gordonrees.com; Oberg, Lisa; Berfield, Frank; jtang@sftc.org; dfeinberg@sftc.org; Feng, Felicia; khollenbeck@storm-law.com

Subject: RE: Russell Roberts - updated email distribution list

Judge Tang, Don and counsel - This email includes additional counsel for the email distribution list.

Thanks.

3/13/2008

Jennifer J. Lee | McKenna Long & Aldridge LLP

101 California Street, 41st Floor | San Francisco, California 94111

Tel: 415.267.4126 | Fax: 415.267.4198

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Phoenix * Dallas * New York * Long Island * Newark * Denver

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GORDON & REES LLP

<http://www.gordonrees.com>

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The Parties

RUSSELL C. ROBERTS, JR.

BUFFALO PUMPS, INC.,

CARRIER CORPORATION,

CRANE CO.,

DURABLE MANUFACTURING COMPANY,

THE GOODYEAR TIRE & RUBBER COMPANY,

GOULD'S PUMPS (IPG), INC.,

METALCLAD INSULATION CORPORATION,

**EXHIBIT B TO THE MARCH 13, 2008
DECLARATION OF GEOFFREY M. DAVIS**

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
BEFORE THE HONORABLE JULIE TANG, JUDGE PRESIDING
DEPARTMENT NUMBER 303

---oOo---

RUSSELL ROBERTS,)	
)	
Plaintiff,)	Case No. 274248
)	Jury Trial
Vs.)	
)	
A. W. CHESTERTON)	
)	
Defendants,)	
_____)	

Reporter's Transcript of Proceedings
Volume 1
Monday, February 11, 2008

APPEARANCES OF COUNSEL:

For Plaintiff:

11
811 West Seventh Street, Suite 206
Los Angeles, CA 90017
By: ANTHONY E. VIEIRA, ESQ.
STEPHEN HEALY, ESQ.

For Defendant Metalclad:

McKenna & Cuneo
101 California Street, 41st Floor
San Francisco, CA 94111
By: FRANK K. BERFIELD, ESQ.

1 APPEARANCES OF COUNSEL:

2

3 For Defendant Crane Co.:

4 Kirpatrick & Lockhart, Preston, Gates, Ellis, LLP
55 Second Street, Suite 1700

5 San Francisco, CA 94105-3493

By: GEOFF M. DAVIS, ESQ.

6 MICHAEL JOHN RAMIREZ, ESQ.

7

8 For Defendant Carrier Corporatoin:

9

10 Tucker, Ellis & West, LLP
135 Main Street, Suite 700

San Francisco, CA 94105

11 By: EVAN NELSON, ESQ.

LILLIAN C. MA, ESQ.

12

13 For Defendant Goodyear:

14

Gordon & Rees
15 Embarcadero Center West, 20th Floor
275 Battery Street

16 San Francisco, CA 94111

By: BOB RICH, ESQ.

17

18

19 For Defendant Durabla Manufacturing Company:

20

Law Offices of Lucinda L. Storm
21 510 A Third Street

San Francisco, CA 94107

22 By: LUCINDA L. STORM, ESQ.

KENNETH D. HOLLENBECK, ESQ.

23

24 For Defendant Gould Pumps:

25

Crosby & Rowell, LLP
26 299 Third Street, Second Floor
Oakland, CA 94607

27 By: THOMAS C. CROSBY, ESQ.

Reported by: Patty Lee Hubble, CSR #3058

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INDEX

Page Vol

Opening Statement by Mr. Vieira	15	1
Opening Statement by Mr. Berfield	48	1
Opening Statement by Mr. Davis	81	1

---oOo---

1 you were deciding the case between individuals.

2 And the corporations that are parties in this lawsuit are
3 Metalclad, Crane, Goodyear, Carrier and Durabla. There are five
4 separate corporations. And when I use words like "person" or
5 "he" or "she" in these instructions to refer to a party, those
6 instructions also apply to each of these defendant corporations.

7 You must not consider whether any of the parties in this
8 case has insurance. The presence or absence of insurance is
9 totally irrelevant.

10 You must decide this case based only on the law and the
11 evidence of the sworn testimony, documents, or anything else
12 that may be admitted in evidence. You must decide what the
13 facts are in this case from the evidence you see or hear during
14 the trial. You may not consider as evidence anything that you
15 see or hear when court is not in session, even something done or
16 said by one of the parties, attorneys or witnesses.

17 What the attorneys say during the trial is not evidence. In
18 their opening statements and closing arguments, the attorneys
19 will talk to you about the law and the evidence. What the
20 lawyers say may help you understand the law and the evidence,
21 but their statements and arguments are not evidence.

22 The attorneys' questions are not evidence. Only the
23 witnesses' answers are evidence.

24 You should not think that something is true just because an
25 attorney's question suggests that it is true. However, the
26 attorneys for both sides can agree that certain facts are true.
27 This agreement is called a stipulation. No other proof is
28 needed, and you must accept those facts as true in this trial.

**EXHIBIT C TO THE MARCH 13, 2008
DECLARATION OF GEOFFREY M. DAVIS**

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
BEFORE THE HONORABLE JULIE TANG, JUDGE PRESIDING
DEPARTMENT NUMBER 303

---oOo---

RUSSELL ROBERTS,)	
)	
Plaintiff,)	Case No. 274248
)	Jury Trial
Vs.)	
)	
A. W. CHESTERTON)	
)	
Defendants,)	
_____)	

Reporter's Transcript of Proceedings
Volume 2
Thursday, February 14, 2008

APPEARANCES OF COUNSEL:

For Plaintiff:

Paul, Hanley & Harley
811 West Seventh Street, Suite 206
Los Angeles, CA 90017
By: ANTHONY E. VIEIRA, ESQ.
STEPHEN HEALY, ESQ.

For Defendant Metalclad:

McKenna & Cuneo
101 California Street, 41st Floor
San Francisco, CA 94111
By: FRANK K. BERFIELD, ESQ.

1 APPEARANCES OF COUNSEL:

2

3 For Defendant Crane Co.:

4 Kirpatrick & Lockhart, Preston, Gates, Ellis, LLP

55 Second Street, Suite 1700

5 San Francisco, CA 94105-3493

By: GEOFF M. DAVIS, ESQ.

6 MICHAEL JOHN RAMIREZ, ESQ.

7

8 For Defendant Carrier Corporatoin:

9

Tucker, Ellis & West, LLP

10 135 Main Street, Suite 700

San Francisco, CA 94105

11 By: EVAN NELSON, ESQ.

LILLIAN C. MA, ESQ.

12

13 For Defendant Goodyear:

14

Gordon & Rees

15 Embarcadero Center West, 20th Floor

275 Battery Street

16 San Francisco, CA 94111

By: BOB RICH, ESQ.

17

18

19 For Defendant Durabla Manufacturing Company:

20

Law Offices of Lucinda L. Storm

21 510 A Third Street

San Francisco, CA 94107

22 By: LUCINDA L. STORM, ESQ.

23

24

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26

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28 Reported by: Patty Lee Hubble, CSR #3058

1 present their case, and they're allowed to do that.

2 There were companies that have appeared in this case, but
3 they're no longer defendants in this case, and I want you not to
4 speculate as to why these parties are no longer in this case.
5 You should not consider this during deliberations.

6 All right. So why don't we take a recess until 10:45. And
7 remember the admonition: Do not talk about the case among
8 yourselves or with anyone else.

9 And see you back here promptly at 10:45.

10 Alternate juror, why don't I see you for a second. Thank
11 you very much.

12 (Recess was taken at 10:24 A.M.)

13 (The proceedings resumed at 10:52 A.M.)

14 THE COURT: Very good. Welcome back, ladies and gentlemen
15 of the jury.

16 Mr. Vieira, would you like to present your first witness.

17 MR. VIEIRA: Yes, Your Honor.

18 The plaintiff would call Mr. Russell Roberts.

19 Mr. Roberts, why don't you come on up, sir.

20 RUSSELL ROBERTS,

21 called as a witness for the Plaintiff, having been duly sworn,
22 testified as follows:

23 THE CLERK: State and spell your name for the record.

24 THE WITNESS: Russell Roberts. Both names?

25 THE CLERK: Yes.

26 THE WITNESS: R-U-S-S-E-L-L, R-O-B-E-R-T-S.

27 THE CLERK: Thank you.

28 THE COURT: Good morning, Mr. Roberts. How are you?

**EXHIBIT D TO THE MARCH 13, 2008
DECLARATION OF GEOFFREY M. DAVIS**

2/25/2008 Russell Roberts v. AW Chesterton (Trial Volume 6, 2/22/08)

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
BEFORE THE HONORABLE JULIE TANG, JUDGE PRESIDING
DEPARTMENT NUMBER 303

---oOo---

RUSSELL ROBERTS, JR.)
)
Plaintiff,) Case No. 274248
) Jury Trial
Vs.)
)
A.W. CHESTERTON, ET AL.)
)
Defendants,)
_____)

Reporters' Transcript of Proceedings
Volume 6
Friday, February 22, 2008

APPEARANCES OF COUNSEL:

For Plaintiff:

Paul, Hanley & Harley
811 West Seventh Street, Suite 206
Los Angeles, CA 90017
By: ANTHONY E. VIEIRA, ESQ.
STEPHEN HEALY, ESQ.

For Defendant Metalclad:

McKenna, Long & Aldridge
101 California Street, 41st Floor
San Francisco, California 94111
By: FRANK K. BERFIELD, ESQ.

2/25/2008 Russell Roberts v. AW Chesterton (Trial Volume 6, 2/22/08)

1 Q. Is that true in '76?

2 THE COURT: I'm sorry, Counsel. Are you starting a new
3 subject now? Because we are closing in on the time that we are
4 to recess. Maybe this is a good time to recess.

5 MR. HEALY: This is a good time.

6 THE COURT: Okay. All right. Then, Mr. Ay, we will expect
7 you to be back here on Monday, at nine o'clock.

8 MR. VIEIRA: Your Honor, can we have a quick conversation
9 with Mr. Ay?

10 THE COURT: Sure.

11 MR. VIEIRA: Just on scheduling. We've already discussed
12 things with these folks.

13 THE COURT: You did? Okay, that's fine. But I need to also
14 instruct the jury about certain items.

15 First of all, as you know, Goodyear is no longer here. They
16 are no longer a party to this action. And do not question why
17 they're not here. And do not consider them in your
18 deliberations. And also we do have answers for you from Mr.
19 Hatfield from the day before yesterday. We won't be able to
20 give it to you today. We'll give that to you on Monday, okay.
21 All right. Let's see what else.

22 All right. So I think those are all the admonitions I'm
23 going to give you. So have a nice weekend. We will see you
24 back here on Monday, at nine o'clock. And thank you all very
25 much for your indulgence. I appreciate it.

26 Remember the admonition. Keep an open mind. And do not
27 talk about the case among yourselves or with anybody else.

28 Approach the bench.

**EXHIBIT E TO THE MARCH 13, 2008
DECLARATION OF GEOFFREY M. DAVIS**

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
BEFORE THE HONORABLE JULIE TANG, JUDGE PRESIDING
DEPARTMENT NUMBER 303

---oOo---

RUSSELL ROBERTS, JR.)	
)	
Plaintiff,)	Case No. 274248
)	Jury Trial
vs.)	
)	
A.W. CHESTERTON, ET AL.)	
)	
Defendants.)	
_____)	

Reporter's Transcript of Proceedings

Volume 12

Thursday, March 6, 2008

APPEARANCES OF COUNSEL:

For Plaintiff:

Paul, Hanley & Harley
811 West Seventh Street, Suite 206
Los Angeles, California 90017
By: ANTHONY E. VIEIRA, ESQ.
STEPHEN HEALY, ESQ.

For Defendant Metalclad:

McKenna, Long & Aldridge
101 California Street, 41st Floor
San Francisco, California 94111
By: FRANK K. BERFIELD, ESQ.

1 APPEARANCES OF COUNSEL:

2

3 For Defendant Crane Co.:

4 Kirkpatrick & Lockhart, Preston, Gates, Ellis, LLP
55 Second Street, Suite 1700

5 San Francisco, California 94105-3493

By: GEOFF M. DAVIS, ESQ.

6

MICHAEL JOHN RAMIREZ, ESQ.

7

8 For Defendant Durabla Manufacturing Company:

9

Law Offices of Lucinda L. Storm

10 510 A Third Street

San Francisco, California 94107

11 By: LUCINDA L. STORM, ESQ.

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26 Reported by: Patty Lee Hubble, CSR No. 3058

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Page 1600

1 FRIDAY, MARCH 7, 2008

2 ---oOo---

3 AFTERNOON SESSION 1:30 p.m.

4 (The following proceedings were had in open court, out of
5 the presence of the jury.)

6 THE COURT: We are on the record at this time, but outside
7 the presence of the jury.

8 I understand Metalclad has settled, but they will remain as
9 a part in this action and there is some conditions, too.

10 But Mr. Vieira, you probably --

11 MR. VIEIRA: Yes. I think the important thing, it's a
12 confidential settlement, Your Honor.

13 We have resolved with Metalclad and we will not be entering
14 any formal dismissal until we get the money, which we expect
15 will be in about 30 days.

16 THE COURT: Thirty days. But they will remain as a party in
17 this case --

18 MR. VIEIRA: Yes, they won't be defending themselves.

19 THE COURT: -- until the dismissal happens.

20 MR. VIEIRA: Right.

21 THE COURT: But they will not appear.

22 So I will explain to the jury that Metalclad will not appear
23 any more in this trial, and they're not to consider that nor
24 consider it in their deliberations. That is what I should tell
25 them.

26 But usually I tell them that a certain corporation will no
27 longer be a party, but in this instance I will not say that. I
28 will say no longer appear.

1 Congratulations, Mr. Berfield.

2 MR. BERFIELD: I wish I could stay.

3 THE COURT: Feels like you're enjoying the trial very much.

4 MR. BERFIELD: I have been enjoying it.

5 THE COURT: You want to continue to indulge the jury and
6 this Court.

7 MR. BERFIELD: I want to give them a big hug.

8 (Laughter.)

9 (Discussion off the record.)

10 MR. DAVIS: Could we stay on the record?

11 THE COURT: Back on the record.

12 MR. DAVIS: It's my understanding the plaintiffs are not
13 pursuing this case against Metalclad; is that correct?

14 THE COURT: That's correct.

15 MR. DAVIS: Metalclad, they are keeping them as a nominal
16 party, for whatever reason, but not pursuing the case. And the
17 jury will be instructed that Metalclad is no longer a party in
18 this action.

19 THE COURT: They will not be instructed they are no longer a
20 party. They will be instructed that Metalclad will no longer
21 appear in this case.

22 MR. DAVIS: Metalclad no longer has an interest in this
23 action. They're not a real party in interest. It's --

24 THE COURT: I will not say that. I will not say that they
25 are no longer a party.

26 It's a technical term but is a necessary term to -- in this
27 situation.

28 MR. DAVIS: Two things -- two further things, Your Honor.

1 One is you ordered disclosure of all settlements to the parties.

2 THE COURT: It was before -- no. It was before this
3 settlement occurred.

4 And if there is any more issue with respect to disclosure,
5 I'm going to have you make a motion before Judge Robertson
6 because he knows about the settlement issues, much better than I
7 do.

8 MR. DAVIS: You did order disclosure of all agreements to
9 agree, Mary Carter agreements, and everything. I would like a
10 representation from these two lawyers that there was no
11 agreement of any kind prior to the signing of that order.

12 THE COURT: I am not going to order them to put on the
13 record anything about the settlement at all. This is really
14 outside of my purview.

15 If you want to do that, you can go to Judge Robertson, and
16 make that motion before him.

17 MR. DAVIS: Because they're no longer pursuing the case
18 against Metalclad, the only two defendants they are pursuing the
19 case against are Durabla and Crane Co., and there is now
20 diversity and Crane Co. intends to remove this case to Federal
21 Court immediately, notwithstanding the fact that the remaining
22 are fraudulent or nominal parties.

23 THE COURT REPORTER: "Not withstanding" --

24 MR. DAVIS: We do object to any further proceedings in this
25 case because we intend to file removal papers in the last two
26 hours.

27 MR. VIEIRA: They're still a party to the action and the
28 dismissal will not be entered -- will not be filed until we get

1 the money, so --

2 MR. DAVIS: They filed -- the dismissals are never filed
3 before they get their money. However, they are not pursuing the
4 claim. This trial is only about Crane Co., Durabla, and Russell
5 Roberts. Complete diversity exists. We are filing THE papers
6 in the next two hours or so regardless of the representation
7 that Metalclad remains a party.

8 THE COURT: I will deny your motion at this time.

9 MR. DAVIS: Okay. If we proceed, we are proceeding over our
10 objections --

11 THE COURT: You can do a writ, but this trial there will not
12 be a stay in the trial proceedings, we will continue, and you
13 can pursue whatever legal remedies --

14 MR. DAVIS: Someone will be bringing a notice, filing a
15 notice of removal over this afternoon which will, under federal
16 law, divest you of further jurisdiction.

17 MR. VIEIRA: Your Honor, if that happens --

18 MR. DAVIS: So Proceeding further, Your Honor, is futile. I
19 believe we should release the jury for the day and proceed
20 accordingly, because this is going to happen in the next couple
21 of hours.

22 And I understand your view that -- it's up to you if you
23 want to continue to proceed until you receive the notice of
24 filing of notice of removal, but the papers are prepared and
25 sitting in my office, somebody will go pick them up.

26 THE COURT: I will continue with the proceeding until I
27 receive the order.

28 MR. DAVIS: Just so it's clear, it's over our objection and

1 we will file a notice today, and this state court notice of
2 filing will be here in the next few hours.

3 THE COURT: And I'm sure you would ask me to have -- you
4 would ask the Court to have a stay of the proceedings, but I
5 deny that at this time.

6 MR. DAVIS: Your Honor, I don't believe there are any
7 options in that. The filing of a notice of removal followed by
8 the filing of a notice of filing of notice of removal in the
9 state court divests the Court of jurisdiction.

10 THE COURT: Why don't you brief me on that.

11 MR. DAVIS: We will have someone bring authorities over to
12 the Court.

13 THE COURT: All right.

14 MS. STORM: Just for the record, Your Honor, Durabla joins
15 in the request that the Court denied for a representation from
16 the plaintiffs and from Metalclad that there was no settlement
17 agreement prior to Your Honor's order yesterday.

18 And I understand that Your Honor has denied the motion and
19 has invited us to go before Judge Robertson. I just would like
20 the record to reflect that we also made that request.

21 THE COURT: The decision is the same.

22 MS. STORM: Thank you, Your Honor.

23 MR. BERFIELD: I want to say on the record I will miss
24 everybody. I will really enjoyed being here.

25 THE COURT: We're going to miss you.

26 MR. BERFIELD: Thank you very much, Your Honor.

27 (Recess was taken at 1:42 PM.)

28

1 (The proceedings resumed at 2:19 P.M.)

2 (The following proceedings were had in open court, in the
3 presence of the jury.)

4 THE COURT: I want the record to reflect all the jurors are
5 present, the attorneys are present.

6 Now, ladies and gentlemen, we just invited you to have lunch
7 today, because we're not going to have any hearing this
8 afternoon.

9 I'm going to call a recess of this trial at this time for at
10 least one week.

11 My clerk will contact you sometime next Monday to let you
12 know when you will be coming back. And the earliest day you may
13 come back is on March the 17th, but this is just an estimate.
14 But I do want you to keep yourself available to this court, at
15 least for the time that we have said the trial will be ongoing.

16 And I don't want you to call, because we will call you.
17 Contact us if you want to give us new contact information.
18 All right. Yes, Juror Number 5.

19 JUROR NO. 5: Does this mean that the trial will extend out
20 into April? Please say no.

21 THE COURT: Maybe about a week or so, it's possible.
22 Let me know if it will be difficult for you.

23 JUROR NO. 5: It is difficult because many of us, we still
24 have jobs that we're trying to do when we're not sitting here.

25 THE COURT: I understand that. And, believe me, I'm taking
26 all of that into consideration. And I do have three alternates.
27 Yes, Juror Number 1.

28 JUROR NO. 1: Would you say that again, what will happen?

1 THE COURT: Yes, I will be happy to do that.

2 We will not be in session this afternoon. That we know;
3 right?

4 Also, we will not be in session all next week. So those of
5 you who are working, you probably have to go back to work next
6 week, all right.

7 We will call you sometime next Monday, maybe Tuesday, to let
8 you know when you will be needed again. And we will give you a
9 specific date and time for you to come back. And it will not be
10 anytime earlier than Monday, March the 17th; because next week
11 is the 10th, the earliest you will come back is the 17th. It
12 may be later than that.

13 And I will definitely take into consideration what Juror
14 Number 5 has said. And I do recognize that each and every one
15 of you have a lot of work and personal life to take care of, and
16 that you are not living just for this trial, but we are trying
17 to do the best we can. And this is unavoidable, it is something
18 that has to happen.

19 So I just want to assure you, we are doing everything we can
20 to make sure that your time -- that you know that we know your
21 time is valuable and it's important.

22 All right. So we will see you back here, hopefully maybe in
23 a week, and I will let you know. My clerk will call you.

24 Now, do we have all your phone numbers and contact
25 information? If it changes next week, you can call us to let us
26 know there has been a change; otherwise, we will call you and
27 reach you.

28 Yes, you have a hand up?

1 JUROR NO. 11: Today counts like we are being here?

2 THE COURT: Yes, absolutely. You have been here. You were
3 here.

4 JUROR NO. 11: I need that for my work.

5 THE COURT: Yes. You are here today, for sure.

6 Yes, Juror Number 8.

7 JUROR NO. 7: Number 7.

8 THE COURT: Oh, yes.

9 JUROR NO. 7: Should I ask the question? Is Mr. Roberts --
10 is he okay?

11 THE COURT: Oh, it has nothing to do with Mr. Roberts
12 personally.

13 JUROR NO. 7: Okay.

14 THE COURT: Nothing to do with him. And don't even
15 speculate or try to guess what the situation is.

16 JUROR NO. 7: Okay. Okay.

17 THE COURT: It's probably nothing that you can -- it's not
18 the reason you're thinking of.

19 JUROR NO. 7: Okay. Okay.

20 THE COURT: And I'm pretty sure it's not the reason you're
21 thinking of. So don't even go into the reason why this has to
22 happen, okay?

23 So recess, and it's unavoidable, and that's all we can tell
24 you. So I will see you back here sometime later.

25 MR. VIEIRA: Your Honor --

26 THE COURT: Yes.

27 MR. VIEIRA: Before you actually finally let everybody go,
28 could we have a quick moment of your time at sidebar?

1 THE COURT: Yes.

2 MR. VIEIRA: One last time.

3 (Laughter.)

4 (Discussion at sidebar, not reported.)

5 THE COURT: Okay. So it's the same, nothing has changed.

6 And you know what, feel free to stay around and finish the

7 food if you want to. Okay, the food is yours, so enjoy it.

8 Take it home if you want.

9 Maybe we will get some boxes for them to pack.

10 (Laughter.)

11 THE COURT: Thank you very much.

12 Attorneys, stick around.

13 MR. VIEIRA: Yes, Your Honor.

14 (Recess taken.)

15 (The proceedings resumed at 3:15 P.M.)

16 (The following proceedings were had in open court, out of the

17 presence of the jury.)

18 THE COURT: The record should reflect the jurors are not

19 present. The plaintiffs are present, represented by Mr. Vieira,

20 and Defendant Crane Company is present.

21 MR. DAVIS: Ms. Storm is still around.

22 MR. RAMIREZ: I think she's in the cafeteria.

23 THE COURT: You can make a special representation.

24 MR. RAMIREZ: Sure.

25 THE COURT: At this time I received a notice of removal

26 pursuant to 28 USC Section 1332 and 1441.

27 As such, this Court is divested of jurisdiction to continue

28 the trial. I have recessed the jury.

1 I don't know, you know, the merits of this case. It is a
2 decision that a federal court has to make. I will not predict
3 what the outcome is, but I am concerned that this is happening
4 in the middle of a trial, and this legal maneuver is creating an
5 extreme inconvenience to the Court and to the jury.

6 I will seriously consider imposing sanctions against the
7 parties in this case, Crane Company, and Durabla, which has
8 joined, if this removal turns out to be without merit. And
9 essentially what I will impose will be a serious one, and this
10 is to give the parties notice.

11 MR. DAVIS: Thank you, Your Honor.

12 THE COURT: Thank you very much.

13 I will see you back here Monday. If you can give me a sense
14 of where things are at on Monday.

15 MR. VIEIRA: This coming Monday?

16 THE COURT: Yes, next Monday.

17 MR. DAVIS: What time?

18 THE COURT: See you back here on Monday.

19 MR. DAVIS: What time?

20 THE COURT: 9:00 o'clock.

21 MR. DAVIS: Our papers would be filed that -- I suspect
22 they're filing papers Monday or Tuesday.

23 MR. VIEIRA: Yes, I suspect --

24 THE COURT: But I still need a sense of where we are at so I
25 can let the jury know if they should come back at a certain
26 point in time.

27 MR. VIEIRA: If it's okay with the Court, why don't we come
28 back on Tuesday instead.

1 THE COURT: That's fine. Can you come back on Tuesday. By
2 that time, things will be settled.

3 MR. VIEIRA: We will probably have our papers filed and we
4 can come in and tell you that, and tell you what we know at that
5 point.

6 THE COURT: What the federal court has told you in terms of
7 the time schedule for arguments and things like that.

8 MR. DAVIS: 9:30?

9 THE COURT: 9:30 is fine, on Tuesday.

10 MR. VIEIRA: All right, Your Honor. Thanks.

11 (Whereupon, proceedings adjourned at 3:17 P.M.)
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1 State of California)

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2 City and County of San Francisco)

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5 I, Patty Lee Hubble, Reporter for the
6 Superior Court of the State of California, City and County of
7 San Francisco, do hereby certify:

8 That I was present at the time of the above proceedings;

9 That I took down in machine shorthand notes all proceedings
10 had and testimony given;

11 That I thereafter transcribed said shorthand notes with the
12 aid of a computer;

13 That the above and foregoing is a full, true, and correct
14 transcription of said shorthand notes, and a full, true and
15 correct transcript of all proceedings had and testimony taken;

16 That I am not a party to the action or related to a party
17 or counsel;

18 That I have no financial or other interest in the outcome
19 of the action.

20

21

22 Dated: March 7, 2008

23

24

25

[Patty Lee Hubble, CSR No. 3058]

26

27

28

**EXHIBIT F TO THE MARCH 13, 2008
DECLARATION OF GEOFFREY M. DAVIS**

Barry Ben-Zion, Ph.D.
Consulting Economist
3588 Kelsey Knolls
Santa Rosa, CA 95403

RUSSELL ROBERTS, Jr.

ECONOMIC LOSS

Personal Injury

BARRY BEN-ZION, Ph.D.
CONSULTING ECONOMIST

3588 KELSEY KNOLLS • SANTA ROSA, CA 95403 • TELEPHONE (707) 526-2236
FAX (707) 526-2258

November 19, 2007

Mr. Dean A. Hanley
Attorney at Law
Paul, Hanley & Harley
1608 Fourth Street, Suite 300
Berkeley, CA 94710

Re: Russell Roberts, Jr. – Personal Injury

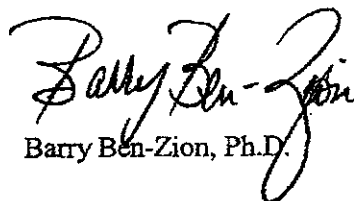
Dear Mr. Hanley:

We arrived at \$1,852,375 as the economic loss sustained by Mr. Russell Roberts as the result of his illness and anticipated premature death.

The total economic loss consists of three components: (1) the future loss of earning capacity, (2) the future loss of retirement income, and (3) the loss of home services. The sources of Mr. Roberts' retirement income is Civil Service Retirement System (CSRS) and social security. Each loss component is described separately.

Please do not hesitate to contact me if you have any questions concerning this report or any other aspect of this case.

Sincerely yours,


Barry Ben-Zion, Ph.D.

BBZ/ic

Enclosure

To: KIRKPATRICK & LOCKHART PRESTON GATES ELLIS LLP From: Heather Brink
Subject: Roberts Jr. Russell C. #12241 ben-Zion report and file

Tuesday, December 04, 2007 2:47 PM Page: 4 of 33

**SUMMARY OF ECONOMIC LOSS
RUSSELL C. ROBERTS, Jr.**

FUTURE LOSS OF EARNING CAPACITY		709,875
FUTURE LOSS OF RETIREMENT INCOME (APV)		
CSRS Retirement Income	822,400	
Social Security Retirement Income	106,500	
TOTAL FUTURE LOSS OF RETIREMENT INCOME		928,900
LOSS OF HOME SERVICES		
PAST LOSS	8,500	
FUTURE LOSS (PV)	205,100	
TOTAL LOSS OF HOME SERVICES		213,600
TOTAL ECONOMIC LOSS		\$1,852,375

VITAL INFORMATION RUSSELL C. ROBERTS, Jr.

DATE OF BIRTH:	09/24/1949
DATE OF BEGINNING OF LOSS OF HOME SERVICES:	02/01/2007
DATE OF TRIAL:	02/01/2008
DATE OF ASSUMED DEATH:	03/08/2008
DATE END OF WORKLIFE EXPECTANCY:	07/04/2015
DATE AT AGE 66 (un-reduced social security retirement income):	09/24/2015
DATE END OF HEALTHY LIFE EXPECTANCY:	07/08/2027
DATE END OF LIFE EXPECTANCY:	11/23/2029
AGE AT BEGINNING OF LOSS OF HOME SERVICES:	57.36
AGE AT TRIAL:	58.36
AGE AT ASSUMED DEATH:	58.46
AGE END OF WORKLIFE EXPECTANCY:	65.78
AGE END OF HEALTHY LIFE EXPECTANCY:	77.79
AGE END OF LIFE EXPECTANCY:	80.17
YEARS FROM BEGINNING OF LOSS OF HOME SERVICES TO TRIAL:	1.00
YEARS FROM TRIAL TO END OF WORKLIFE EXPECTANCY:	7.42
YEARS FROM TRIAL TO AGE 66:	7.65
YEARS FROM TRIAL TO END OF HEALTHY LIFE EXPECTANCY:	19.43
YEARS FROM TRIAL TO END LIFE EXPECTANCY:	21.81

Sources:

Worklife Expectancy: Gary R. Skoog and James E. Ciecka, "Probability Mass Function for Years to Final Separation from the Labor Force Induced by the Markov Model"
Journal of Forensic Economics, Vol. 16, No. 1 Winter 2003.

Male, High School Graduate

Healthy Life Expectancy: Expectancy Data, "Healthy Life Expectancy, 2002 Tables."
Shawnee Mission, Kansas, 2004.

Male, White

Life Expectancy: National Center for Health Statistics, "United States Life Tables, 2003"
Male, White

FACTS, CONSIDERATIONS, AND ASSUMPTIONS

1. The total economic loss consists of three components: (1) Mr. Roberts' future loss of earning capacity, (2) his future loss of retirement income, and (3) the loss of home services.

Future Loss of Earning Capacity – Present Value

2. After his retirement from his federal employment Mr. Roberts was planning to return to the labor force as an independent contractor or consultant and perform the type of work he had performed for the federal government, working for private employers.
3. Mr. Roberts indicates in his deposition that he would have return to the labor force earning \$100,000 per year (page 1134). For the purpose of this analysis it is assumed that absent his illness Mr. Roberts would have started his employment on 2/01/2008, earning \$100,000 per year. By working for a non-governmental agency Mr. Roberts would have accrued credits toward a social security retirement income.
4. The future loss of earning capacity is computed from 2/01/2008 to 9/24/2015, Mr. Roberts' 66th birthday, the date Mr. Roberts would have been eligible to begin receiving his un-reduced social security retirement income, a period of 7.65 years.
5. Mr. Roberts' earning capacity is computed at \$100,000 per year, expressed in today's dollars.
6. The present value computation of the future loss is based on the assumption that the discount rate would exceed the increase in income by two percent per year, compounded.

Future Loss of Retirement Income – Actuarial Present Value

7. The sources of Mr. Roberts' retirement income is Civil Service Retirement System (CSRS) and social security.

CSRS Retirement Income

8. Mr. Roberts is currently receiving CSRS retirement income of \$4,197 per month. CSRS has a cost-of-living increase provision that is tied to the changes in the Consumer Price Index. This income is projected to increase to \$4,294 per month as of 1/01/2008. The future loss of this income begins on the assumed date of Mr. Roberts' premature death.
9. The actuarial present value of the future loss of CSRS retirement income is based on the 2003 U.S. Life Expectancy Table mortality factors for white males at 5.5 percent interest, with an allowance for the system's cost-of-living increase provision, computed at 3 percent per year, compounded.

Social Security Retirement Income

10. Had Mr. Roberts been able to work until age 66 on 9/24/2015, he would have accrued a social security retirement income. It is projected that this income would have been \$1,278 per month, payable upon retirement. The future loss of this income begins on Mr. Roberts' 66th birthday.
11. Social Security has a cost-of-living increase provision that is tied to the changes in the Consumer Price Index.
12. The actuarial present value of the future loss of social security retirement income is based on the 2003 U.S. Life Expectancy Table mortality factors for white males at 5.5 percent interest, with an allowance for the system's cost-of-living increase provision, computed at 3 percent per year, compounded.
13. The future loss of social security retirement income is net of the contributions (at 6.2 percent of earnings) that Mr. Roberts would have had to make from his annual earnings during employment years.

Loss of Home Services

14. The value of home services is based on the assumption that absent his illness Mr. Roberts would have been capable of providing home services commensurate with the services provided by the average male of his employment status, marital status, and age. The average value of home services is based on a study by Expectancy Data, *The Dollar Value of a Day*.

15. The loss of home services begins as of 2/01/2007. It is assumed that Mr. Roberts initially lost 50 percent of his ability to perform home services, and that he will continue to deteriorate and will be unable to perform any home services as of 2/01/2008.
16. No loss of home services is computed for the last three years of Mr. Roberts' normal life expectancy.
17. The present value computation is based on the assumption that the discount rate would exceed the increase in the value of home services by one percent per year, compounded.

Other Losses

18. This report does not consider the past or future medical care costs or any other losses that may have been incurred.

**EXHIBIT G TO THE MARCH 13, 2008
DECLARATION OF GEOFFREY M. DAVIS**

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
BEFORE THE HONORABLE JULIE TANG, JUDGE PRESIDING
DEPARTMENT NUMBER 303

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RUSSELL ROBERTS, JR.)	
)	
Plaintiff,)	Case No. 274248
)	Jury Trial
vs.)	
)	
A.W. CHESTERTON, ET AL.)	
)	
Defendants.)	
_____)	

Reporter's Transcript of Proceedings
Volume 12
Thursday, March 6, 2008

APPEARANCES OF COUNSEL:

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1 APPEARANCES OF COUNSEL:

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6 MICHAEL JOHN RAMIREZ, ESQ.

7

8 For Defendant Durabla Manufacturing Company:

9

Law Offices of Lucinda L. Storm

10 510 A Third Street

San Francisco, California 94107

11 By: LUCINDA L. STORM, ESQ.

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26 Reported by: Patty Lee Hubble, CSR No. 3058

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1 INDEX

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	PLAINTIFF'S WITNESSES	PAGE	VOLUME
3			
4	HORN, BARRY		
5	Examination by Mr. Davis (402 Hearing)	1523	12
	Direct Examination by Mr. Vieira	1532	12
6	Cross-Examination by Mr. Berfield	1567	12
	Cross-Examination by Mr. Ramirez	1578	12
7	Redirect Examination by Mr. Vieira	1580	12
	Recross-Examination by Mr. Berfield	1585	12
8	Further Direct Examination by Mr. Vieira	1586	12
	Examination by Mr. Vieira (Re Jury Questions)	1587	12
9	Examination by Mr. Vieira (Re Jury Questions)	1592	12

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E X H I B I T S

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	PLAINTIFF'S EXHIBITS	DESCRIPTION	IDEN	EVID VOL.
13				
	97	Dr. Horn's exhibit	1569	12

14

15

16

E X H I B I T S

17

	DEFENSE EXHIBITS	DESCRIPTION	IDEN	EVID VOL.
18				
19	V	Report by Dr. Horn dated October 22, 2007	1568	12
20				

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1 A. That will be done to monitor the course of the disease for
2 the purpose of decision making.

3 Q. And what about further hospitalizations?

4 A. Oh, I can assure you, he will wind up in the hospital again.

5 Q. All right. Now, just taking the past medical procedures
6 that he's had -- and by the way, have you looked at records in
7 this case?

8 A. Yes.

9 Q. What have you looked at?

10 A. I looked at his records, I have actually seen bills for most
11 of his care.

12 Q. And taking that into account, do you have an opinion as to
13 the reasonable cost of his reasonably necessary medical care
14 that he received as a result of developing mesothelioma?

15 A. To date?

16 Q. To date.

17 A. Yes.

18 Q. What is that?

19 A. \$350,000.

20 Q. What is that based on?

21 A. That is based upon the actual bills that I have seen for the
22 bulk of his care and what I expect it will be for the care I
23 have not seen, the bills which I have not seen as yet.

24 Q. The bills you have not seen as yet are what?

25 A. I have not seen the bills for his radiation therapy at
26 Swedish Medical Center in December, and it may have percolate
27 into January, I'm not sure. And he's also subsequently had a CT
28 scan and a PET scan.

1 Q. Okay. With respect to those items for which you haven't
2 seen the bills, the radiation, Swedish, the CT scan and PET
3 scan, do you have an opinion as to what they would cost?

4 A. The radiation at Swedish Medical Center is \$50,000, and the
5 PET scan is close to \$5,000. The CT scan is about \$2,000.

6 Q. How do you know the radiation is about 50,000?

7 A. I have seen bills from Swedish Medical Center for people who
8 received therapeutic radiation for this disease before.

9 Q. How do you know the CT scan or PET scans are the numbers you
10 gave us?

11 A. Same answer, I have seen bills from Washington for those
12 procedures.

13 Q. All right. We're talking about the topic of chemotherapy.
14 Is there anything uniform about its likely cost, irrespective of
15 what area you're getting your treatment?

16 A. Yes.

17 Q. Explain that.

18 A. Certain costs are the same irrespective of what area of the
19 country you're in. Let's say you're getting chemotherapy, the
20 cost of the chemotherapeutic acts the same nationally. It
21 doesn't matter if you are getting your care in Mississippi, in
22 New York or San Francisco or Berkeley or Tacoma or Seattle. The
23 cost of the chemotherapy is the same.

24 If you're going to get a PET scan done, GE's PET scanners
25 cost the same, whether you are in Seattle or you're in San
26 Francisco or you're in Mississippi or in New York or wherever.

27 So you have to cost-account out the cost of that machine, so
28 the costs of this are the same. The radioisotope that you use

1 in order to do that PET scan costs the same irrespective of what
2 area of the country you are in.

3 Q. Is there anything about the costs of care that might be
4 distinct as between San Francisco and Los Angeles or Seattle or
5 Tacoma?

6 A. Yes.

7 Q. Explain that to us.

8 A. If you get hospitalized in Tacoma, the costs of a given
9 hospitalization in Tacoma will be less than the hospitals in
10 San Francisco or in Berkeley, or in Los Angeles.

11 So you get admitted because you get dehydrated from
12 chemotherapy, and you wind up, you go into shock and you need
13 treatment, the costs in Tacoma would be less than here.

14 If you need home healthcare, the home healthcare costs in
15 San Francisco is more than the home healthcare costs would be in
16 Tacoma.

17 Q. Have you taken all those things into account in developing
18 the opinion that you have provided us?

19 A. Yes, that's right, I have.

20 Q. Okay. Now, in terms of reasonable costs of reasonably
21 necessary medical care necessitated by the mesothelioma, do you
22 have an opinion as to what that will be?

23 A. In the future?

24 Q. In the future.

25 A. It's a wide range. I can provide you that range.

26 Q. All right. Go ahead.

27 A. His future costs of care are variable, depending upon how
28 long he lives, what treatment regimen he chooses, and whether he

1 responds to that regimen or not.

2 In your experience, taking into account the fact that I
3 think it's unlikely he will be alive more than a year from now,
4 there is a limit to what I think that cost would be. So I put
5 future costs up to \$200,000, excluding heroic care. I'm
6 expecting this will not include heroic care. And whether he
7 would reach \$200,000 would be a function of how long he lives
8 and whether he responded to treatment or not.

9 Q. If he lives a year, it's likely to be on the order of
10 \$200,000?

11 A. Close to 200,000.

12 Q. Dr. Horn, by the way, did you take a look at any of the
13 chest x-rays or CT scans for the purpose of looking at the
14 plaque formations that he had on his pleura?

15 A. These CTs are not good for that purpose that I have here.
16 But I have a CT, I have -- I was provided with an abdominal CT
17 scan which was done in 2005 which includes cuts through the
18 lower chest, which demonstrate plaque.

19 MR. VIEIRA: Okay. Your Honor, with the Court's permission
20 I would like to show the jurors that as well.

21 THE COURT: Any objection?

22 MR. BERFIELD: No objection.

23 MR. RAMIREZ: No objection.

24 MR. VIEIRA: Your Honor, I don't know if this is an
25 appropriate point to take the morning break.

26 THE COURT: Why don't we take a 15-minute morning break and
27 come back at five minutes of 11:00.

28 Remember the admonition: Do not talk about the case among